1 Michael P. Thorman, State Bar No. 63008 BONJOUR, THORMAN, BARAY & BILLINGSLEY 24301 Southland Drive, Suite 312 Hayward, CA 94545 (510) 785-8400 3 michael@btbandb.com 4 5 Attorneys for Defendant Hesham Badawi 6 7 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA 8 SAN FRANCISCO DIVISION 9 10 UNITED STATES OF AMERICA, No. CR-07-0804 VRW Plaintiff, 11 12 VS. **DEFENDANT'S SENTENCING** 13 **MEMORANDUM** 14 HESHAM BADAWI, Date: April 24, 2008 15 Defendant. Time: 1:30 p.m. Dept.: Judge V. Walker 16 17 INTRODUCTION 18 Defendant Hesham Badawi stands convicted by his plea of one count of conducting an 19 20 unlicensed money transmitting business in violation of 18 U.S.C. § 1960. The defendant agrees 21 with the guideline calculations that are set forth in the pre-sentence investigative report but writes 22 separately in this sentencing memorandum to bring certain matters to the Court's attention which 23 pertain to the appropriate sentence to be imposed in this case. 24 25 SENTENCING CONSIDERATIONS 1. 26 Defendant's cooperation 27 Not contained in the pre-sentence report is the degree to which Mr. Badawi 28 cooperated with the agents in the investigation in this case. This is not a criticism of the

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Mr. Badawi first learned of the investigation in this case when federal officers executed a search warrant at his office and his home. Following the search, Mr. Badawi talked with the officers for many hours about his money transmitting business. When Mr. Badawi thereafter obtained counsel, conversations between several of the agents and Mr. Badawi continued and included detailed discussions about the nature and extent of Mr. Badawi's business. At one point, at the request of the agents, Mr. Badawi and his counsel met at the San Francisco FBI Office with agents from South Korea who had an interest in persons and businesses to whom Mr. Badawi had sent money in South Korea as part of his money transmitting business.

Ultimately the agents requested that Mr. Badawi act proactively in essentially an undercover capacity to lure persons of interest to the agents into transactions that could form the basis for further investigations and possible charges. When Mr. Badawi expressed his willingness to tell the agents what he knew but not to work for them in creating or pursuing other criminal leads, the relationship ended.

In my view, the above is a relevant consideration under 18 U.S.C. § 3553 in that it shows Mr. Badawi to be a law abiding person who committed what amounts to a status offense. There is certainly no need to impose a sentence to deter Mr. Badawi from committing further crimes.

2. Financial Conditions of Sentence

The recommendation of the probation report is that Mr. Badawi be ordered to pay a fine of \$2500.00. Based on the amount of funds that Mr. Badawi has forfeited, \$65,992.72, Mr. Badawi submits that he has already suffered a substantial enough financial penalty without adding a fine to it as well. As explained in the pre-sentence report, paragraph 26, the amount of forfeiture already equals or exceeds his total profit from operating the money transmitting business. Further punishment in this regard is not necessary.

The pre-sentence report also recommends that Mr. Badawi be ordered not to open any new lines of credit and/or incur new debt without prior permission of the probation officer, although this condition could be waived upon successful payments of all financial obligations imposed by the judgment. Neither the circumstances of this offense nor the additional financial obligations that might be imposed as part of this sentence justifies such a condition. If the Court is inclined to impose such restriction, the condition should be waived upon successful payment of any financial obligations imposed by the judgment.

3. Term of Probation

Mr. Badawi has advised me that he intends to repatriate with his family to Syria in July, 2008. He does not presently have any intentions to return to the United States although he is a United States citizen.

While the Court has the power to order Mr. Badawi not to leave the country while he is on probation, there does not appear any reason to do so. At the same time, it is obviously impractical to transfer any probationary supervision to Syria. It is therefore requested that probation terminate upon his departure from the United States.

If the Court is concerned that Mr. Badawi intends to return to the United States after probation expires, the Court could order that the period of probation would be tolled from the time Mr. Badawi left the country and extending for some period of years, like four years. Mr. Badawi could be ordered to report to probation upon his re-entry into the country and probation supervision would recommence upon the occurrence of that eventuality. If Mr. Badawi had not returned to the country within the hypothetical four years, probation would simply terminate.

There are obviously other options the Court could pursue. In any event, the Court is respectfully requested to impose a sentence that would allow Mr. Badawi to repatriate to Syria.

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Dated: April 21, 2008 Respectfully submitted,

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Michael P. Thorman